

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT THIKA

ELC CASE NO. E208 OF 2024

PETER ORERI OBWAGE PLAINTIFF

VERSUS

JOEL MUIRURI MWANGI DEFENDANT

RULING

Introduction

1. This application invites the Court to revisit its ruling delivered on 2nd July 2025. It is, in truth, an entreaty that the Court reopens what it has already pronounced itself upon and, upon such reconsideration, departs from that determination.
2. The Applicant approaches the court by way of a Notice of Motion dated 14th July 2025, and seeks, in the main, a stay of execution of the ruling delivered on 2nd July 2025 pending the hearing and determination of the present application, as well as an order that the Court reviews and sets aside its orders issued on that date. Costs are also sought.
3. The application is premised on the grounds on the face of it and the supporting affidavit of Joel Muiruri sworn on even date.
4. The Applicant contends that the suit property has two distinct registration numbers namely L.R No. 4953/2750 and Thika

Municipality Block 13/292 (hereinafter 'the suit property') and thus the suit property as described in the Plaintiff/ Respondent's application was unknown to them.

5. It is the Applicant's contention that the Holy Ghost Church of East Africa, in which he claims to be a trustee, is the beneficial owner of the suit property.
6. The Applicant asserts that the Holy Ghost Church of East Africa has been in actual and continuous occupation of the suit property from 1st September 1998 and has erected a church thereon.
7. The Applicant contends that in view of the injunction issued by this Honourable court in its ruling delivered on 2nd July 2025, the members of the Holy Ghost Church of East Africa will suffer hardship if they are barred from accessing the suit property where they have allegedly worshiped for over two decades.
8. In sum, the applicant beseeches this Court to stay the execution and to review the ruling delivered on 2nd July 2025.
9. The application has not gone unchallenged. The Respondent, in the replying affidavit of Peter Oteri Obwage sworn on 27th October 2025, resists it in firm terms.
10. The Respondent depones that the Applicant was duly served with their application dated 14th March 2025 which gave rise to the impugned ruling, but elected, for reasons unexplained, to file no response. To now seek audience by way of review is, in the

Respondent's view, a belated strategy, not a *bona fide* invocation of the Court's corrective jurisdiction.

11. The Respondent further contends that the Applicant's professed ignorance of the Respondent's proprietary interest in the suit property is contrived. The Respondent asserts that they are, and have been since 1999, the registered proprietor thereof, having purchased the same, and that such title is neither equivocal nor concealed.
12. As for the documents exhibited by the Applicant, the Respondent is dismissive, maintaining that the allotment letter relied upon relates to a wholly different parcel from the suit property, and is thus irrelevant, if not misleading.
13. The Respondent contends that they have been in actual possession of the suit property since they purchased it in 1999.
14. The Respondent further contends that the application falls far short of the exacting threshold for review. The Respondent asserts that no new and important matter has been discovered, nor has any mistake or error apparent on the face of the record been demonstrated. Nor, it is added, has the Applicant advanced any sufficient reason to justify a reopening of the Court's determination.
15. In the Respondent's view, the application is wholly at odds with the strictures of Order 45 Rule 1 of the Civil Procedure Rules, is devoid of merit and ought to be dismissed with costs.

16. The application was canvassed by way of written submissions which I have examined.
17. Having examined the application, the affidavit in support, the replying affidavit in opposition and the rival submissions and the relevant authorities, the single issue for determination is whether the applicant has satisfied the threshold for review under Order 45 Rule 1 of the Civil Procedure Rules.

Analysis and Determination

18. The jurisdiction of this Court to review its own orders is neither inherent nor unbounded. It is a creature of statute, expressly donated by Section 80 of the Civil Procedure Act and circumscribed by Order 45 of the Civil Procedure Rules.
19. Section 80 of the *Civil Procedure Act* provides as follows:

“Any person who considers himself aggrieved—

a) by a decree or order from which an appeal is allowed by this Act, but from which no appeal has been preferred; or

b) by a decree or order from which no appeal is allowed by this Act, may apply for a review of judgment to the court which passed the decree or made the order, and the court may make such order thereon as it thinks fit.”

20. The provision opens a narrow window through which an aggrieved party may approach the Court, but leaves no doubt that such

approach must be in strict conformity with the conditions set out in the Rules that give it operational content.

21. Order 45 of the Civil Procedure Rules reiterates the Court's power to review its own judgments and orders, but carefully delimits the circumstances under which that jurisdiction may be invoked. Order 45 Rule 1(b) is explicit that such power may only be exercised where an applicant satisfies one or more of the prescribed grounds, namely:
 - i. That he has discovered new evidence which after the exercise of due diligence was not within his knowledge or was not available at the time the order was made;
 - ii. That there was a mistake or error apparent on the face of the record; and
 - iii. That there is sufficient reason to warrant the review sought and that the application had been made timeously.
22. On the material placed before the Court, the applicant does not bring himself within any of the foregoing thresholds. There is no allegation, let alone demonstration, of any newly discovered matter that could not, with due diligence, have been placed before the Court at the material time. No error or mistake apparent on the face of the record has been identified with the requisite clarity. Equally, no sufficient cause, within the meaning contemplated under the Rule, has been established to justify the Court's intervention.
23. The Applicant's central complaint is that the suit property bears two registration numbers, and that the particular reference employed in

the Plaintiff/Respondent's application, that is L.R No. 4953/2750, was not, according to him, known or recognisable.

24. That contention, however, does not disclose any of the recognised grounds for review. At best, it is a factual assertion going to identification and nomenclature, a matter that could, and ought to, have been raised at the hearing of the Respondent's application dated 14th March 2025.
25. In my view, the application is an attempt to reopen the factual matrix and invite the Court to reconsider its earlier determination under the guise of review, a course the law does not permit.
26. In view of the foregoing, the Court is not persuaded that the applicant has brought himself within the strict confines of Section 80 of the Civil Procedure Act and Order 45 Rule 1 of the Civil Procedure Rules. The application does not disclose any legally cognisable basis for review. It therefore fails.
27. Accordingly, the application dated 14th July 2025 is hereby dismissed with costs.
28. It is so Ordered.

Dated, signed and delivered virtually, at Thika this 28th day of April 2026.

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J. M. ONYANGO

JUDGE

In the presence of:

Ms Kabata for the Plaintiff/Respondent

Mr Kereu Benjamin for Mr Muturi Njoroge for the Defendant /Respondent

Court Assistant: Hinga

ORIGINAL